CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1347
Heard at Montreal, Tuesday, May 14, 1985

Concerning

ONTARIO NORTHLAND RAILWAY

and

BROTHERHOOD OF RAILWAY, AIRLINE CLERKS

DISPUTE:

Establishment by the company of a part-time position at Moosonee.

JOINT STATEMENT OF ISSUE:

Effective October 26, 1984 the incumbent of the position, Mrs. B. Small, resigned from the service. On that date, the company gave notice to the union of the discontinuation of the position of Clerk Typist to be effective Nove??er 2, 1984.

Effective November 12, 1984, the company established a part-time position of Clerk Typist at Moosonee. Inasmuch as it was to work less than 24 hours per week, it was excluded from the bargaining unit.

The union grieved that the company had violated Article 23.3 of the Collective Agreement. The grievance was denied.

FOR THE BROTHERHOOD:

(SGD.) A. J. TIERNAY
General Chairman

FOR THE COMPANY:

(SGD.) P. A. DYMENT
General Manager

There appeared on behalf of the Company:
A. Rotondo, Manager, Labour Relations, ONR, North Bay
D. J. Borden, Manager Operations, Telecommunications, ONR, North Bay

And on behalf of the Brotherhood:

A. J. Tiernay, General Chairman, BRAC, North Bay
Frank Pincivero, Vice General Chairman, BRAC, North Bay

AWARD OF THE ARBITRATOR

The facts indicated that the company attempted to accommodate Mrs. Small's circumstance upon the exhaustion of her maternity leave benefits by converting her regular full time clerk-typist's position (i.e., 7-3/4 hrs per day) to a part time position (i.e., 4 hrs per day). In this sense the company created a new clerk-typist position upon the discontinuance of the full time position hitherto occupied

by Mrs. Small. There is no dispute that Mrs. Small discharged the same "clerical" functions and related duties as performed previously while occupying the full time position. Moreover, she was paid the same rate of pay for the hours worked as was the case when retained as a full time employee.

The trade union claims that the company violated Article 23.3 in discontinuing the full time position formerly occupied by Mrs. Small in order to accom?odate her circumstance in the newly created part time position. Article 23.3 reads as follows:

> "Established positions shall not be discontinued and new ones created under a different title covering the same class of work for the purpose of reducing the rate of pay, or evading the application of these rules."

As pointed out during the course of the hearing I am satisfied that the company was not in breach of Article 23.3 of the collective agreement for the reasons to follow. Firstly, at all material times the newly created part time position continued to attract the same rate of pay as the discontinued full time position. Moreover, am satisfied that at all material times the newly created part time position was a position that remained under the umbrella of the collective agreement. Subsection 1.2 of the collective agreement provides that clerical positions (such as the position occupied by Mrs. Small) that require an employee "to regularly devote not less than four hours a day" in clerical functions are part of the bargaining unit. And by operation of Subsection 1.1 any employee who occupies a clerical position for not less than four hours a day is entitled to "the Rules and Rates of pay" contained in that collective agreement. Since the newly created part time position(occupied by Mrs. Small) required regular employment of four hours a day, I am satisfied that the company did not violate "or evade the application of these rules". Subsections 1.1 and 1.2 of the collective agreement reads as follows:

> "--Employee
> Shall be understood to mean any person filling any position incorporated in these rules and rates of pay."
>
> "--Clerks
> Shall be understood to mean employees who regularly devote not lesssthan four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and similar work and to operation of office mechanical equipment and devices in connection with

such duties and work."

In sum, because the newly created position continued to attract the same rate of pay and was a position that fell within the bargaining unit, the company was not in violation of Article 23.3 of the collective agreement.

Because the trade union did not object to Mrs. Small occupying the newly created position, I make no comment with respect to the company's selection of her to perform the duties of that job.

DAVID H. KATES,
ARB?TRATOR.